IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14058 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDUJI MADHAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14058 of 2004

MR PM BHATT for Petitioner No. 1

MR NAGESH SOOD AGP for Respondent No. 1-5

MR MA BUKHARI for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/02/2005

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, the learned AGP waives

service of rule on behalf of the respondent Nos.1 to 5. Shri M.A.Bukhari, the learned advocate waives service of rule for respondent No.6.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

.RS 2.

#. In this petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 23.1.2004 / 24.9.2004 passed by the Secretary, Revenue Department (Appeals), State of Gujarat in Revision Application No.96 of 1997 in dismissing the same and confirming the order passed by the Collector, Ahmedabad while dismissing the revision application No.143 / 1996 dated 12.8.1997 and confirming the order passed by the Deputy Collector dated 16.8.1996 passed in RTS/ 39 / 96 and confirming the order passed by the City Deputy Mamlatdar dated 9.3.1995 quashing and setting the Entry No.15621 dated 27.1.1995. It is the case of the petitioner that on the basis of the industrial exemption granted by the Commissioner of Industries, State of Gujarat, the petitioner had purchased the land in question from the respondent No.6 by way of registered sale deed and necessary entry to that effect came to be mutated in the revenue record vide Entry No.15621 dated 27.1.1995. It appears from record that the land was permitted to be sold by the respondent No.6 to the petitioner on certain conditions as per the order passed by the Industrial Commissioner, State of Gujarat dated 5.7.1990. It was found by the City Deputy Mamlatdar that there was breach of Condition No.2 of the order passed by the Industrial Commissioner dated 5.7.1990 and accordingly, the entry No.15621 dated 27.1.1995 came to be cancelled / not granted by him by order dated 9.3.1991. Being aggrieved and dissatisfied with the order passed by the City Deputy Mamlatdar dated 9.3.1995 in not certifying the Entry No.15621 dated 27.1.1995, the petitioner preferred appeal before the City Deputy Collector being RTS/ Appeal No.39 / 1996 which came to be dismissed by the order dated 16.8.1996. Being aggrieved and dissatisfied with the order passed by the City Deputy Collector dated 16.8.1996 passed in RTS Appeal No.39/1996, the petitioner preferred revision application before the Collector, Ahmedabad being Revision Application No.143 / 96 under Rule 108 (6) of the Gujarat Land Revenue Rules which also came to be dismissed by the Collector, Ahmedabad by its order dated 12.8.1997. Being aggrieved and dissatisfied with the order passed by the

Collector, Ahmedabad dated 12.8.1997 in revision application No.143 / 1996, the petitioner preferred revision application before the State Government i.e. the Secretary, Revenue Department (Appeals) being Revision Application No.96 / 1997 which also came to be dismissed by the Secretary, Revenue Department (Appeals) by its judgment and order dated 23.1.2004 / 24.9.2004 which has given rise to filing of the present special civil application under Article 226 and 227 of the Constitution of India.

#. Shri P.M.Bhatt, the learned advocate appearing on behalf of the petitioner has vehemently submitted that unless and until the exemption granted by the Industry Commissioner is either withdrawn and / or cancelled by the appropriate authority on the ground that there is breach of condition No.2 of the order dated 5.7.90, the revenue authority has no jurisdiction to cancel the entry and / or had no jurisdiction not to certify the entry in question. It is also submitted that the revenue authority is bound to give effect to the registered sale deed executed between the petitioner and the respondent No.6 and therefore, requested to allow the present special civil application accordingly.

#. Shri Nagesh Sood, the learned AGP for the respondent - State Authority has submitted that it was found by the revenue authority that there is breach of Condition No.2 of exemption granted vide order passed by the Industry Commissioner, State Government dated 5.7.1990, the authorities are justified in not certifying the aforesaid entry and therefore, requested to dismiss the present special civil application.

#. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the authorities were exercising the powers under the provisions of the Gujarat Land Revenue Rules, more particularly, under the provisions of Rule 108 of the Rules, popularly known as the RTS proceedings. It is also not in dispute that the petitioner purchased the land in question from respondent No.6 by registered sale deed dated 30.7.1994 and therefore, the revenue authority is bound to give effect to the registered sale deed in the record of rights of revenue record. However, the land came to be sold by the respondent No.6 to the petitioner on the basis of the exemption granted by the Industry Commissioner, State of Gujarat vide order dated 5.7.1990 and there are certain conditions imposed vide said order. If there is any breach of the condition, then, it is ultimately for the Industry Commissioner to

withdraw exemption. However, as held by the Hon'ble Supreme Court as well as in the catena of decisions of this Court, mere entry in the revenue record does not confer any right, title or authority in favour of the party having entry in revenue record. The revenue entry is merely for fiscal purpose for recovering and collecting the revenues and only on the basis of the entry, it cannot be said that if it is there is breach of condition, there is no breach of condition. Under the circumstances, it is an admitted position that till date the exemption granted by the Industry Commissioner vide order dated 5.7.90 is in existence and the same is yet not withdrawn and / or canceled by the appropriate authority. Under the circumstances, by modifying the order passed by all the authorities below, it is ordered that the appropriate authority, more particularly, the Industry Commissioner, State of Gujarat is not precluded from cancelling and / or withdrawing the industrial exemption granted vide order dated 5.7.1990 if ultimately found that there is breach of any of the conditions of order dated 5.7.1990, if permissible under the law. It is also ordered that the entry in question shall be subject to ultimate outcome of the proceedings that may be initiated by the Industry Commissioner, State of Gujarat, for cancellation and / or withdrawal of exemption granted vide order dated 5.7.1990.

Rule is made absolute to the aforesaid extent with no order as to costs.

Date : 21.2.2005 [M.R.Shah, J.]

#kailash#